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KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER WATKINS III, WILLIAM P	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/807,508
Filing Date: August 09, 2001
Appellant(s): GROITZSCH ET AL.

Richard M. Rosati
For Appellant

EXAMINER'S ANSWER

MAILED
MAY 02 2007
GROUP 1700

This is in response to the appeal brief filed 16 January 2007
appealing from the Office action mailed 31 May 2006.

Art Unit: 1772

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. The examiner notes that applicant's explanation of the inadvertent filing of a duplicate amendment after final, starting on the first page of the brief, is correct.

Art Unit: 1772

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

Art Unit: 1772

(8) Evidence Relied Upon

4,840,829	Suzuki et al.	6-1989
5,112,690	Cohen et al.	5-1992
6,004,306	Robles et al.	12-1999
5,783,503	Gillespie et al.	7-1998
5,162,074	Hills	11-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11-15, 17-25 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. 4,840,829) in view of Hills (U.S. 5,162,074) and Gillespie et al. (U.S. 5,783,503) further in view of Cohen et al. (U.S. 5,112,690) and Robles et al. (U.S. 6,004,306).

Suzuki et al. teach forming a top sheet of a sanitary article by forming apertures in a non-woven web by the use of water jets (abstract). The web may be between 10 and 50 grams per square meter and have fibers of .5 to 15 denier (col. 3, lines 50-55 and col. 4, lines 1-5). The top sheet of Suzuki et al. may be made of hydrophobic fibers (col. 3, lines 60-69).

Art Unit: 1772

Hills teaches the formation of non woven webs by the use of pie type fibers made of two different polymers that are then separated into micro fibers that may have denier values as low as .1, (col. 7, lines 10-20). Gillespie et al. teach the liberation of pie micro fibers by hydro action as prior art and the greatly increased strength of the webs using micro fibers made of two different types of longer chain polymers (abstract col. 1, lines 30-49, col. 6, lines 50-65). Robles et al. teach that a top sheet made of hydrophobic fibers can be sprayed with a surfactant to allow liquids to be better drawn into the top sheet before it can flow off of the sides of the top sheet (col. 8, lines 54-65). Cohen et al. teaches coating a hydrophobic top sheet or diaper liner to prevent run off with a weight percent loading of surfactant that can be as low as .05 weight percent of the total web (col. 2, lines 20-69, col. 6, lines 5-20).

The instant invention claims the use of pie type conjugate fibers that are separated by hydro action in webs with apertures formed by hydro jets for use as top sheets in sanitary articles. The instant invention further claims a less than .2 weight percent loading of a wetting agent on the top sheet. It would have been obvious to one of ordinary skill in the art to have used the micro fibers of Hills and Gillespie et al. as the web

Art Unit: 1772

material in the process of Suzuki et al. in order to form a top sheet of good softness and high strength. As the top sheet of the combination is of similar material to that taught in the instant specification it is assumed to have similar strike through and rewet values when used as a top sheet. It further would have been obvious to have sprayed the top sheet of Suzuki et al. as modified above with a surfactant at a loading as low as .05 weight percent in order to prevent liquids from flowing over the sides of the top sheet before it is absorbed because of the teachings of Cohen et al. and Robles et al.

(10) Response to Argument

Appellant argues that the rejection does not teach the use of a surfactant that is impregnated into nonwoven fabric at a rate of less than .2 weight percent based on the total weight of the nonwoven fabric. The examiner disagrees and relies on Cohen et al. and Robles et al. for this limitation. Robles et al. teaches at col. 8, lines 61-65 that a surfactant maybe either sprayed on to the material or the material to be treated may be immersed in the surfactant. Coating by spraying or coating by impregnation and immersion are thus equivalent methods. Immersion into a surfactant is the method used in the instant

Art Unit: 1772

specification to impregnate a nonwoven fabric (see instant Example 2). Robles et al. is silent as to specific amounts but Cohen et al. states at col. 6, lines 8-20 that from .05% to 3% based on the weight of the web material may be used.

Appellant argues that Cohen et al. only teaches adhering surfactant to the surface of the fiber or mixing it in the bulk and having it migrate to the surface of the fabric and that therefore the value of .05% to 3% of surfactant based on the weight of the nonwoven cannot be used to establish an amount of surfactant that is impregnated into a fabric such as that of Robles et al. or the instant specification. The examiner disagrees. In Example 2 of the instant specification the fabric is immersed in a bath of the surfactant in solution, the fabric is removed, dried and weighed to establish the increase of weight due to the added surfactant. In Cohen et al. (col. 12, lines 35-50) a reverse procedure is used. The fabric is extracted with solvent and the solvent analyzed to determine the total amount of surfactant extracted, which is then divided by the bulk weight of the fabric which was treated with the surfactant.

Thus Cohen et al. is concerned with surfactant that is available to be extracted from a surface, which is equivalent to

the amount of surfactant that deposited by spraying or immersion in Robles et al. or immersion as in the instant specification. Thus it would have been obvious to one of ordinary skill in the art to have practiced the lower range taught by Cohen et al. which meets the instant claim limitation of less than .2% surfactant based on the weight of web.

Appellant makes much of the language of "adhering" in Cohen et al. and that the amounts surfactant mixed with the bulk polymer in order to achieve the desired migration to the surface in columns 6 and 7 are higher than .2 weight percent. The position of the examiner is that the use of adhering can be better understood by looking at Examples 1 and 2 of Cohen et al. where a fabric web is saturated with as much surfactant in solution as the fabric will hold. The saturated fabric is then dried so that the surfactant is retained in the fabric at a desired rate based on a weight percent of the bulk fabric. In Example I of Cohen et al. this weight is .1% of the bulk fabric. The position of the examiner is that this process is substantially similar to that of Example II of the instant specification and teaches an amount of surfactant that meets the less than .2% instant claim limitation.

Art Unit: 1772

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 1772

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




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